BANK OF CHINA

v.

NGAN CHIN WEN

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB SAID JC
[CIVIL SUIT NO: D8-22-334-2001]
8 MAC 2004

CIVIL PROCEDURE: *Summary judgment - Appeal - Whether there were triable issues - Whether provisions of s. 4 Exchange Control Act 1953 contravened - Whether compound interest ought to be imposed - Whether plaintiff entitled to post-judgment contractual interest - Function of court when considering affidavit evidence - Whether there was error of computation of amount due*

CIVIL PROCEDURE: *Interrogatories - Application for leave to deliver - Principles applicable - Whether interrogatories necessary and relevant*

EVIDENCE: *Fresh or further evidence - Application to adduce - Whether relevant to present appeal - Whether reasonable diligence exercised by applicant - Whether requirements fulfilled*

These were appeals by the defendant against the decisions of the learned senior assistant registrar allowing the plaintiff's application for summary judgment under O. 14 of the Rules of the High Court 1980 ('RHC') for the amount of USD5,162,837.32 for overdraft facilities granted by the plaintiff to the defendant *vide* three facilities letters, and dismissing the defendant's application for interrogatories pertaining to one Wee Boon Ping and the plaintiff's actual role in a disputed agreement between the defendant and Wee Boon Ping ('the agreement'). The defendant also applied under O. 56 r. 1(3A) of the RHC to admit fresh evidence about the third overdraft facility, particularly the letter dated 9 November 1994, in which the defendant said "… in this connection, I agree to open account no. 2 and Wee Boon Ping undertakes to give a personal guarantee towards account no. 2 …", at the hearing of the appeals before the judge in chambers. The defendant, in appealing against the summary judgment granted by the SAR, raised the following issues: (i) that there was a triable issue *ie*, whether the agreement between the three parties existed; (ii) that the defendant's act of borrowing from the plaintiff contravened the provisions of s. 4 of the Exchange Control Act 1953 ('ECA'); (iii) that compound interest was imposed when there was no longer a banker-customer relationship in existence; and (iv) that the plaintiff was not entitled to post-judgment contractual interest since it was not included in its pleadings.

Held (dismissing the defendant's appeals and application):

[1] The proposed interrogatories had no relevance in this claim and did not serve any useful purpose other than to achieve the defendant's objective of diverting the issue from the debt due under the overdraft facilities to the alleged agreement between the defendant, Wee Boon Ping and the plaintiff. The plaintiff was in no way a party to the private agreement between the defendant and Wee Boon Ping. Of particular relevance to this issue was the letter by the defendant dated 13 June 1999 to the plaintiff where he said that he was aware that the plaintiff was not liable for any private arrangement between him and Wee Boon Ping. In his earlier letter dated 10 February 1999 to the plaintiff, the defendant had said that he "fully understands the legal implication and my responsibility towards account no. 2". The interrogatories were unnecessary and irrelevant since the issue, if any, had been clearly settled in these admissions by the defendant in his correspondence to the plaintiff. (pp 294 g & 295 c-e)

[2] The letter that the defendant had sought to admit as fresh evidence did not support his ground for the application *ie*, that it showed that there was an understanding between the plaintiff and the defendant that part of the loan would be given to Wee Boon Ping. It just said that the defendant agreed to open account no. 2 and Wee Boon Ping undertook to give a personal guarantee towards the same. Therefore, the letter would not have made any difference if it had been brought during the hearing before the SAR. Further, the defendant's letter in which he had stated that the loan to Wee Boon Ping was a private arrangement between them would confirm its irrelevance as an issue in this appeal. The defendant had also failed to prove that he had exercised all reasonable diligence to bring it before the SAR. Hence, the defendant had failed to fulfil the test enunciated to adduce such fresh evidence. (p 296 a-c)

[3] In this case, since a Malaysian citizen had borrowed from a foreign bank in Singapore, the permission of the Controller of Foreign Exchange of Malaysia was not required and the borrowing did not run contrary to s. 4 of the ECA. As for the imposition of compound interest, the defendant had failed to provide the documents or propositions of law to support his contention that the plaintiff was not entitled to such interest. The plaintiff was also entitled to the post-judgment contractual interest as it was embodied in the agreement and clearly stated in the body of the pleadings. (p 299 c-f)

[3a] In the present case, there were no issues to be tried. The attempt by the defendant to implicate the late Wee Boon Ping to negate the defendant's liability to pay had failed. The contemporaneous documents clearly showed that the overdraft facilities were for the benefit of the defendant and the plaintiff need look no further than the person it was contracting with for payment. The defendant had in fact, on numerous occasions, admitted liability. Whenever a court is required to judicially appreciate affidavit evidence, it is a necessary adjunct of that function for the court to ascertain whether the allegations made are inherently improbable, inherently incredible or patently inconsistent with contemporaneous documents. In this instance, the allegations made were inconsistent with all the contemporaneous correspondence between the defendant and the plaintiff. (p 301 a-d)

[3b] It was also trite law that the certificate of indebtedness was conclusive evidence unless the defendant could show that there was a manifest error or that there was an instance of fraud. The certificate of indebtedness in the present case stood unchallenged as conclusive evidence of indebtedness and there was no error or disparity in the computation of the amount due under the facilities granted to the defendant. (p 301 e-f)

Case(s) referred to:

Abdol Mulok Awang Damit v. Perdana Industri Holdings Bhd [2003] 3 CLJ 497 CA ***(refd)***

Bank Negara Malaysia v. Mohd Ismail & Ors [1992] 1 CLJ 627; [1992] 1 CLJ (Rep) 14 SC ***(refd)***

Det Danske Hedeselskabet v. KDM International Plc [1994] 2 Lloyd's Law Reports 534 ***(refd)***

Hall v. Sevalco Ltd [1996] The Times Law Reports ***(refd)***

Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors [1995] 2 CLJ 900 CA ***(foll)***

Keppel Finance Ltd v. Phoon Ah Lek [1994] 3 MLJ 37 ***(foll)***

Lau Foo Sun v. Government of Malaysia [1970] 2 MLJ 70 ***(refd)***

Sarawak Building Supplies Sdn Bhd v. The Director of Forests, Forest Department Headquarters, Kuching & Ors [1999] 8 CLJ 527 HC ***(refd)***

Ward v. Chief Constable of Avon & Somerset [1985] 129 SJ 537 ***(refd)***

Legislation referred to:

Exchange Control Act 1953, s. 4(1), (2)

Rules of the High Court 1980, O. 14, O. 42, O. 56 r. 1(3A)

For the plaintiff/respondent - Vinayagar (CL Wong); M/s Skrine

For the defendant/appellant - KK Yeow (TT Ng & Keith Kwan); M/s Syarikat Kam Woon Wah

Reported by Suresh Nathan

JUDGMENT

Abdul Wahab Said JC:

This is a suit by the plaintiff against the defendant for the amount of *inter alia* USD5,162,837.32, under overdraft facilities granted to the defendant *vide* three facilities letters. In the course of the proceedings, various applications were filed by the parties. The plaintiff filed an application for summary judgment under O. 14 Rules of the High Court 1980 and the defendant filed his summary judgment application against the plaintiff for part of his counterclaim. There were various other applications filed by the defendant. The defendant's applications were heard by the learned senior assistant registrar and were all dismissed. The plaintiff's summary judgment application was allowed. Hence, the defendant filed Notices of Appeal to the judge in chambers against all the senior assistant registrar's decisions and an application to admit fresh evidence at the hearing of the appeal before the judge in chambers. The appeals and application are as follows:

(a) Enclosure 31: The defendant's appeal against the decision of the senior assistant registrar on 7 May 2002, rejecting the defendant's application (in encl. 24), to strike-out the "without prejudice" correspondence in the affidavit of Lim Siew Keng;

(b) Enclosure 32: The defendant's appeal against the decision of the senior assistant registrar on 31 May 2002 allowing the plaintiff's summary judgment application (in encl. 4) for the amount of USD5,162,837.32 for overdraft facilities granted by the plaintiff to the defendant *vide* three facilities letters dated 12 January 1993, 10 March 1993 and 9 November 1994;

(c) Enclosure 33: The defendant's appeal against the decision of the senior assistant registrar on 31 May 2002, dismissing the defendant's application for "interrogatories" (in encl. 11);

(d) Enclosure 35: The defendant's appeal against the decision of the senior assistant registrar on 13 May 2002, dismissing his application for security for costs of RM100,000 (in encl. 15);

(e) Enclosure 36: The defendant's appeal against the decision of the senior assistant registrar on 31 May 2002, dismissing the defendant's application (in encl. 22) for summary judgment on part of the defendant's counterclaim;

(f) Enclosure 49: The defendant's application under O. 56 r. 1(3A) Rules of High Court 1980 to admit fresh evidence.

On the date of hearing of all the appeals, counsel for the defendant applied to withdraw encls. 31 and 36. Counsel for the plaintiff applied for costs and I henceforth struck-off encls. 31 and 36 with costs. The parties submitted further on encls. 49 and 33. After hearing their submissions, I dismissed encls. 49 and 33 with costs.

The parties again appeared on the remaining enclosures. I dismissed encl. 32 with costs. As for encl. 35, the defendant applied to withdraw it with no order as to costs. I struck-off encl. 35 with liberty to file afresh.

Since encls. 31, 35 and 36 are withdrawn, the defendant filed Notices of Appeal to the Court of Appeal only as regards encls. 32, 33 and 49. My grounds are as regards these three enclosures as set forth herein below:

(a) Enclosure 33: The Defendant's Appeal Against The Senior Assistant Registrar's Decision Dismissing His Application For Interrogatories

Vide an application before the senior assistant registrar in encl. 11, the defendant applied to serve on Lim Siew Keng, the plaintiff's Assistant Manager, interrogatories marked as "A" and that Lim Siew Keng provide the answers within 60 days from the date of the order. The answers that the defendant has sought to obtain are on facts pertaining to Tan Sri Wee Boon Ping and the plaintiff's actual role in the disputed transaction. Even though the plaintiff said that the defendant's deposition on the Wee Boon Ping issue is "irrelevant", "scandalous" and "non *bona fide*", the defendant said that the issues are of great importance because they can assist the parties in identifying the issues and to ensure a fair conduct of proceedings.

Essentially the interrogatories are related to Wee Boon Ping and whether he had applied for a loan from plaintiff or subsidiary of plaintiff. Also sought in the interrogatories are particulars of the loan taken by him and whether it had been fully paid or otherwise including whether he had been blacklisted by plaintiff.

After hearing oral submissions I find that the proposed interrogatories has no relevance in this claim and does not serve any useful purpose other than to achieve the defendant's objectives of diverting the issue from the debt due under the overdraft facilities to the alleged agreement between the defendant, Wee Boon Ping and the plaintiff. This does not serve the real purpose of interrogatories in that it is:

(a) for disposing fairly the cause or matter; or

(b) for saving costs.

In *Sarawak Building Supplies Sdn Bhd v. The Director of Forests, Forest Department Headquarters, Kuching & Ors* [1999] 8 CLJ 527, Mohamad Kamil Awang J referred to the case of *Hall v. Sevalco Ltd* [1996] The Times Law Reports 27 March, which approved *Det Danske Hedeselskabet v. KDM International Plc* [1994] 2 Lloyd's Law Reports 534 where Colman J said:

> Interrogatories must be shown as necessary and it should not be used as a source of ammunition to be routinely discharged.

The first consideration by the court in exercising its discretion to grant leave to administer interrogatories is the relevance of the questions posed, to facts directly in issue.

The plaintiff is in no way a party to the private agreement between the defendant and Wee Boon Ping. The withdrawal of the appeal in encl. 31 allowed the correspondence and admission by defendant in those letters particularly in respect of the loan to Wee Boon Ping a non issue. Of particular relevance to this issue is the letter by defendant dated 13 June 1999 (exh. A7 of encl. 7) to the plaintiff where he said amongst others that he is aware that the bank was not liable for private arrangement between him and Wee Boon Ping. Earlier in his letter dated 10 February 1999 (exh. A3 of encl. 7) to plaintiff bank, defendant had said that he "fully understands the legal implication and my responsibility towards Account No. 2." The interrogatories are unnecessary and irrelevant since the issue if any had been clearly settled in these admissions by the defendant in his correspondence to the plaintiff bank.

For the above reasons, the application for interrogatories was dismissed with costs.

(b) Enclosure 49: The Defendant's Application Under O. 56 r. 1(3A) Rules Of High Court 1980 To Admit Fresh Evidence

Fresh evidence sought to be admitted by the defendant is about the third overdraft facility, particularly the letter dated 9 November 1994, where the defendant said: "... in this connection, I agree to open Account No. 2 and Tan Sri Wee Boon Ping undertakes to give a personal guarantee towards account No. 2."

The defendant said that the application to admit the document was filed late because the letter was written seven years ago and the defendant is a 70 year old man. I noted that the defendant was a practising lawyer before becoming a businessman and corporate figure.

Having perused the contents of the letter that the defendant had sought to admit as fresh evidence I find that it does not support his ground for the application, ie, that it shows that there is an understanding between the plaintiff and the defendant that part of the loan will be given to Wee Boon Ping. It just says that the defendant agrees to open Account No. 2 and Tan Sri Wee Boon Ping undertakes to give a personal guarantee towards Account No. 2. Therefore, the letter itself would not have made any difference if it had been brought during the hearing before the senior assistant registrar. Further, the defendant's letter (exh. A7 in encl. 7) where he had stated that the loan to Wee Boon Ping was a private arrangement between them would confirm its irrelevance as an issue in this appeal.

I also find that the defendant has failed to prove that he had exercised all reasonable diligence to bring it before the senior assistant registrar. The letter was written by the defendant himself to the plaintiff. The defendant should satisfy the court that the failure to exhibit the letter earlier was not due to indolence or a lackadaisical attitude. Even if the letter is no longer in his possession, he could always write in to the plaintiff for a copy, which the defendant had not done. I am satisfied the defendant had failed to fulfil the test enunciated to adduce such fresh evidence (see *Lau Foo Sun v. Government of Malaysia* [1970] 2 MLJ 70).

For the above reasons, I also dismissed this appeal with costs.

(c) Enclosure 32: The Defendant's Appeal Against The Decision Of The Senior Assistant Registrar Allowing The Plaintiff's Application For Summary Judgment

The issues raised by the defendant are as follows:

(i) *Vide* an agreement between the plaintiff, defendant and one Wee Boon Ping, overdraft facilities were given to the defendant so as to enable the defendant to further lend the amount of USD3,000,000 to Wee Boon Ping, and for the plaintiff to claim the said amount from Wee Boon Ping. According to the defendant, this is evidenced from the fact that the third overdraft facility was operated through Account 2, whereas there were no problems with Account 1 operated by the defendant. There was also a guarantee by Wee Boon Ping for the third facility. This guarantee, according to the defendant, was given at the request of the plaintiff. The defendant said that the fact that there is a question whether such an agreement between the three parties exist, is an issue to be tried.

(ii) The loan agreement is void for illegality. This is in reference to the private loan between the defendant and Wee Boon Ping. The issue of whether the plaintiff is a party to the agreement is a question of fact that cannot be determined in an O. 14 application. If the 3rd facility

was given by the plaintiff to the defendant for the purpose of giving the loan to Wee Boon Ping, it is illegal and in contravention of s. 4(1) Exchange Control Act 1953: "Except with the permission of the controller, no person, other than the authorised dealer, shall in Malaysia, buy or borrow any gold currency from or sell or lend any gold or foreign currency to, any person other than an authorised dealer". The defendant said that the plaintiff, defendant and Wee Boon Ping are not authorised dealers within the meaning of the Act.

According to the defendant, he was induced by the plaintiff into believing that the overdraft facilities were increased upon the approval of the third loan, when in actual fact they were not. The USD 3 million that was supposed to be loaned to Wee Boon Ping was from the RM9 million, under the two original overdraft facilities granted to the defendant. When the defendant took out the third overdraft facility, he did so without realising that he was withdrawing from the first and second overdraft facilities. The illegality of the third overdraft facility had affected the first and second overdraft facilities and made them illegal as well.

(iii) The statement of claim is defective. There is a difference between the amount in the bank statement in exh. "A4" to encl. 5 and the bank statement in exh. "A3" to encl. 5. Because of these disparities, the court will be left in a state of doubt as to whether there are other disparities apart from the ones just mentioned. In addition to that, there are no provisions about PLR in the letters. The 8.5% rate was raised for the first time in encl. 4. There is a likelihood that the interest charges were arbitrarily made.

(iv) Because of the above disparities, there is a "manifest error" in the certificate ("A4" to encl. 5). Different terms were used to describe the approved rate and limit of the overdraft facilities. The defendant contended that if the plaintiff wants to claim interest, it must show that the overdraft and approved limit are one and the same. This could only be done through a full hearing.

(v) Compound interest was imposed when there is no longer in existence a banker and customer relationship. The defendant contended that when the overdraft is overdrawn, the plaintiff's claim for repayment ends the relationship between banker and customer. Furthermore, a major portion of the plaintiff's claim in the statement of claim consists of compound interest which is not valid under the law. This is a form of "unjust enrichment" to the plaintiff.

(vi) The plaintiff is not entitled to post judgment contractual interest. This must be pleaded. If the plaintiff did not include it in its pleadings, the court should not allow it. The learned counsel for defendant referred to *Ward v. Chief Constable of Avon & Somerset* [1985] 129 SJ 537, where the court said: "... The claim for interest must be pleaded in the body of the pleading and not only in the prayer though it should be repeated in the prayer."

(vii) The contract under which the overdraft facilities were granted is subject to the laws of Singapore and the Singapore Courts. Paragraph 12 in the "General Terms and Conditions Governing Banking Facility" stated that the facilities letters are subject under the Laws of Singapore and "... the borrower hereby irrevocably submits to the jurisdiction of the courts of Singapore."

From the arguments put forward by the parties, I find that the defendant had not raised any triable issues. On the alleged loan to Wee Boon Ping, I could come to no other finding apart from the fact that whatever arrangement it was that took place between Wee Boon Ping and the defendant, is a matter between the two of them. The defendant had not shown through his affidavit and exhibits, any documents or letters on the purported transaction. The letter that was exhibited in the defendant's first affidavit, "NCW4" supposedly to support this contention, does not achieve the defendant's desired purpose at all. In fact, it is a letter from Wee Boon Ping addressed to the defendant, stating that the remittance, without mentioning the amount, is the full responsibility of Wee Boon Ping and shall be treated as a personal loan from the defendant. The letter strengthened the plaintiff's argument that the loan to Wee Boon Ping is a private arrangement between the defendant and Wee Boon Ping. The letter does not show that the plaintiff is a party to the arrangement or that the plaintiff should look to Wee Boon Ping for payment.

The fact remains that the defendant is a customer of the plaintiff's and the facilities granted are for the defendant, not Wee Boon Ping. When the defendant defaults in payment of the said facilities to the plaintiff, the plaintiff has a right to combine the defendant's accounts. This makes the defendant's argument that the third accounts' illegality will make the 1st and 2nd accounts similarly illegal, untenable. This is more so by virtue of the fact that the defendant had on September 1996 informed the plaintiff that he wishes to close Account No. 2 with immediate effect, and to transfer the amount owed under Account No. 2 to Account No. 1. The said letter was exhibited as "A2" to the plaintiff's affidavit in encl. 7. This also defeats the defendant's attempt at disputing the manner in which his indebtedness was calculated.

Similarly, the defendant's contention that the borrowing from the plaintiff is illegal by virtue of s. 4(2) of the Exchange Control Act 1953, does not hold when seen in the light of VC George J's oft-cited decision in *Keppel Finance Ltd v. Phoon Ah Lek* [1994] 3 MLJ 37. In that case, His Lordship had rejected the defendant's contention that the defendant's borrowing has contravened the provisions of s. 4 of the Exchange Control Act 1953. It was held that s. 4(2) of the Act does not *per se* prohibit residents in Malaysia from borrowing foreign currency outside Malaysia as it is clearly restricted to acts done in Malaysia. Since 'resident' is defined to include Malaysian citizens who do not reside in Malaysia, the words 'in Malaysia' in s. 4(2) must be meant to qualify 'borrowing' and not 'resident'. In our case, since the borrowing was made by a Malaysian citizen with a foreign bank in Singapore, the controller's permission is therefore not required and the borrowing does not run foul of s. 4 of the Exchange Control Act 1953.

As for the imposition of compound interest, I find that the defendant has failed to provide the documents or the law in support of his contention that the plaintiff is not entitled. As such, the plaintiff's right to claim as evidenced in the express terms of the agreement between the plaintiff and the defendant on the abovesaid is not challenged. In *Keppel Finance*'s case, it was contended on behalf of the defendant that the plaintiffs were only entitled to default interest up to judgment. VC George J held that: "Under O. 42 of the Rules of the High Court 1980, the court was empowered to order contractual interest on judgment sums. In this case, the loan agreement entitled the finance company to charge additional interest calculated on the amount of interest unpaid from the date the interest fell into arrears until actual payment." Similarly, in our case, the plaintiff is entitled to the post judgment contractual interest. It was embodied in the agreement and clearly stated in the body of pleadings, as well as repeated in the prayer.

The position with regards to O. 14 applications is clear. It is only granted where the defendant has no defence to the action and that there are no issues to be tried. In coming to my decision, I am aided by the clear guidance given by Azmi FCJ in the case of *Bank Negara Malaysia v. Mohd Ismail & Ors* [1992] 1 CLJ 627; [1992] 1 CLJ (Rep) 14, where His Lordship said:

> ... In our view, basic to the application of all those legal propositions, is the requirement under O. 14 for the court to be satisfied on affidavit evidence that the defence has not only raised an issue but also that the said issue is triable. The determination of whether an issue is or is not triable must necessarily depend on the facts or the law from each case as disclosed in the affidavit evidence before the court. On the treatment of conflict of evidence on affidavits, Lord Diplock speaking in the Privy Council on *Eng Mee Yong & Ors. v. Letchumanan* had this to say at p. 217:

> Although in the normal way is not appropriate for a judge to attempt to resolve conflicts of evidence on affidavit, this does not mean that he is bound to accept uncritically, as raising a dispute of fact which calls for further investigation, every statement on an affidavit however equivocal, lacking in precision, inconsistent with undisputed contemporary documents or other statements by the same deponent, or inherently improbable in itself it may be.

Although Lord Diplock was dealing with an application for removal of caveat in that particular case, we are of the view that the above principle of law is relevant and applicable in all cases where a judge has to decide a case on affidavit evidence.

Under an O. 14 application, the duty of a judge does not end as soon as a fact is asserted by one party, and denied or disputed by the other in an affidavit. Where such assertion, denial or dispute is equivocal, or lacking in precision or is inconsistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable in itself, then the judge has a duty to reject such assertion or denial, thereby rendering the issue not triable. In our opinion, unless this principle is adhered to, a judge is in no position to exercise his discretion judicially in an O. 14 application. Thus, apart from identifying the issues of fact or law, the court must go one step further and determine whether they are triable. This principle is sometimes expressed by the statement that a complete defence need not be shown. The defence set up need only show that there is a triable issue.

Where the issue raised is solely a question of law without reference to any facts or where the facts are clear and undisputed, the court should exercise its duty under O. 14. If the legal point is understood and the court is satisfied that it is unarguable, the court is not prevented from granting a summary judgment merely because "the question of law" is at first blush of some complexity and therefore takes a little longer to understand.

Bank Negara Malaysia v. Mohd Ismail & Ors was followed by the Court of Appeal in *Abdol Mulok Awang Damit v. Perdana Industri Holdings Bhd* [2003] 3 CLJ 497 where the appellant raised the issue that he was not liable to repay the loan because it was obtained at the behest of the Chief Executive Officer of the respondent and that it is part of a scheme to increase the cash flow of the company. Since there was no contemporaneous document or documents to reflect that arrangement, the Court of Appeal found that what the appellant had raised is nothing more than a bare assertion and therefore does not amount to a triable issue, such as to compel a case to go for full trial.

In the present case, I am thoroughly convinced by the plaintiff's arguments that there are no issues to be tried. The attempt by the defendant to implicate the late Wee Boon Ping to negate the defendant's liability to pay has failed. The contemporaneous documents clearly showed that the overdraft facilities are for the benefit of the defendant and the plaintiff need look no further than the person it is contracting with, for payment. The defendant had in fact, on numerous occasions admitted liability. The admissions can be found in exh. "A6", a letter from the defendant to the plaintiff, asking for more time to pay and exh. "A7", a letter from the defendant to the plaintiff, asking the plaintiff to waive interest on the overdue amount. The defendant had in exh. "NCW9" to his own affidavit in reply, stated in the second paragraph that, "... never in my correspondence with your esteemed bank that I denied the repayment", and in the last paragraph, "... with or without Wee Kok Tiong, I call on your esteemed bank in the 4th week of this month to discuss the settlement formula." Perhaps at this juncture *Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors* [1995] 2 CLJ 900 would provide guidance that whenever the court is required to judicially appreciate affidavit evidence, it's a necessary adjunct of that function for the court to ascertain whether the allegations made are inherently improbable or inherently incredible or patently inconsistent with contemporaneous documents. I find the allegations are inconsistent with all the contemporaneous correspondence between defendant and plaintiff.

It is also trite law that the Certificate of Indebtedness is conclusive evidence unless the defendant can show that there is a manifest error or that there is an instance of fraud. The Certificate of Indebtedness for sum of USD5,162,837.32 exhibited as "A4" including contractual interest as at 1 August 2000 stood unchallenged as conclusive evidence of indebtedness. I am satisfied there is no error or disparity in the computation of the amount due under the facilities granted to the defendant.

Based on all the contemporaneous documents, the affidavits and submissions, I granted the plaintiff's application for summary judgment under O. 14 and consequentially the defendant's appeal is dismissed with costs.